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SENATE BILL 326

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

JOHN ARTHUR SMITH

AN ACT

RELATING TO GAMBLING; MAKING ALL GAMBLING IN THE STATE
ILLEGAL; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA
1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] LEGISLATIVE INTENT EXPRESSED. -

~~-The legislature's intent in enacting this law amending and
repealing certain laws relating to gambling is to make clear
that the public policy of the state is to prohibit and make
illegal all gambling in New Mexico no matter by whom conducted
and without regard to its location, except gaming permitted to
be conducted by an Indian nation, tribe or pueblo pursuant to
the federal Indian Gaming Regulatory Act.~~

Section 2. Section 7-1-2 NMSA 1978 (being Laws 1965,
Chapter 248, Section 2, as amended) is amended to read:

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"7-1-2. APPLICABILITY. -- The Tax Administration Act
applies to and governs:
A. the administration and enforcement of the
following taxes or tax acts as they now exist or may hereafter
be amended:
(1) Income Tax Act;
(2) Withholding Tax Act;
(3) Gross Receipts and Compensating Tax Act
and any state gross receipts tax;
(4) Liquor Excise Tax Act;
(5) Local Liquor Excise Tax Act;
(6) any municipal local option gross receipts
tax;
(7) any county local option gross receipts
tax;
(8) Special Fuels Supplier Tax Act;
(9) Gasoline Tax Act;
(10) petroleum products loading fee, which
fee shall be considered a tax for the purpose of the Tax
Administration Act;
(11) Alternative Fuel Tax Act;
(12) Cigarette Tax Act;
(13) Estate Tax Act;
(14) Railroad Car Company Tax Act;
(15) Investment Credit Act;

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1 (16) Corporate Income and Franchise Tax Act;

2 (17) Uniform Division of Income for Tax

3 Purposes Act;

4 (18) Multistate Tax Compact;

5 (19) Tobacco Products Tax Act;

6 (20) Filmmaker's Credit Act; and

7 (21) the telecommunications relay service

8 surcharge imposed by Section 63-9F-11 NMSA 1978, which

9 surcharge shall be considered a tax for the purposes of the

10 Tax Administration Act;

11 B. the administration and enforcement of the
12 following taxes, surtaxes, advanced payments or tax acts as
13 they now exist or may hereafter be amended:

14 (1) Resources Excise Tax Act;

15 (2) Severance Tax Act;

16 (3) any severance surtax;

17 (4) Oil and Gas Severance Tax Act;

18 (5) Oil and Gas Conservation Tax Act;

19 (6) Oil and Gas Emergency School Tax Act;

20 (7) Oil and Gas Ad Valorem Production Tax

21 Act;

22 (8) Natural Gas Processors Tax Act;

23 (9) Oil and Gas Production Equipment Ad

24 Valorem Tax Act;

25 (10) Copper Production Ad Valorem Tax Act;

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1 and

2 (11) any advance payment required to be made
3 by any act specified in this subsection, which advance payment
4 shall be considered a tax for the purposes of the Tax
5 Administration Act;

6 C. the administration and enforcement of the
7 following taxes, surcharges, fees or acts as they now exist or
8 may hereafter be amended:

9 (1) Weight Distance Tax Act;

10 (2) Special Fuels Tax Act;

11 (3) the workers' compensation fee authorized
12 by Section 52-5-19 NMSA 1978, which fee shall be considered a
13 tax for purposes of the Tax Administration Act;

14 (4) Uniform Unclaimed Property Act;

15 (5) 911 emergency surcharge and the network
16 and database surcharge, which surcharges shall be considered
17 taxes for purposes of the Tax Administration Act;

18 (6) the solid waste assessment fee authorized
19 by the Solid Waste Act, which fee shall be considered a tax
20 for purposes of the Tax Administration Act; and

21 (7) the water conservation fee imposed by
22 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
23 for the purposes of the Tax Administration Act; [and

24 ~~(8) the gaming tax imposed pursuant to the~~
25 ~~Gaming Control Act;~~] and

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1 D. the administration and enforcement of all other
2 laws, with respect to which the department is charged with
3 responsibilities pursuant to the Tax Administration Act, but
4 only to the extent that the other laws do not conflict with
5 the Tax Administration Act. "

6 Section 3. Section 10-15-1 NMSA 1978 (being Laws 1974,
7 Chapter 91, Section 1, as amended) is amended to read:

8 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR
9 OPEN MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

10 A. In recognition of the fact that a representative
11 government is dependent upon an informed electorate, it is
12 declared to be public policy of this state that all persons are
13 entitled to the greatest possible information regarding the
14 affairs of government and the official acts of those officers
15 and employees who represent them. The formation of public
16 policy or the conduct of business by vote shall not be
17 conducted in closed meeting. All meetings of any public body
18 except the legislature and the courts shall be public meetings,
19 and all persons so desiring shall be permitted to attend and
20 listen to the deliberations and proceedings. Reasonable
21 efforts shall be made to accommodate the use of audio and video
22 recording devices.

23 B. All meetings of a quorum of members of any
24 board, commission, administrative adjudicatory body or other
25 policymaking body of any state agency, any agency or authority

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1 of any county, municipality, district or any political
2 subdivision, held for the purpose of formulating public policy,
3 including the development of personnel policy, rules,
4 regulations or ordinances, discussing public business or for
5 the purpose of taking any action within the authority of or the
6 delegated authority of any board, commission or other
7 policymaking body are declared to be public meetings open to
8 the public at all times, except as otherwise provided in the
9 constitution of New Mexico or the Open Meetings Act. No public
10 meeting once convened that is otherwise required to be open
11 pursuant to the Open Meetings Act shall be closed or dissolved
12 into small groups or committees for the purpose of permitting
13 the closing of the meeting.

14 C. If otherwise allowed by law or rule of the
15 public body, a member of a public body may participate in a
16 meeting of the public body by means of a conference telephone
17 or other similar communications equipment when it is otherwise
18 difficult or impossible for the member to attend the meeting in
19 person, provided that each member participating by conference
20 telephone can be identified when speaking, all participants are
21 able to hear each other at the same time and members of the
22 public attending the meeting are able to hear any member of the
23 public body who speaks during the meeting.

24 D. Any meetings at which the discussion or adoption
25 of any proposed resolution, rule, regulation or formal action

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1 occurs and at which a majority or quorum of the body is in
2 attendance, and any closed meetings, shall be held only after
3 reasonable notice to the public. The affected body shall
4 determine at least annually in a public meeting what notice for
5 a public meeting is reasonable when applied to that body. That
6 notice shall include broadcast stations licensed by the federal
7 communications commission and newspapers of general circulation
8 that have provided a written request for such notice.

9 E. A public body may recess and reconvene a meeting
10 to a day subsequent to that stated in the meeting notice if,
11 prior to recessing, the public body specifies the date, time
12 and place for continuation of the meeting and, immediately
13 following the recessed meeting, posts notice of the date, time
14 and place for the reconvened meeting on or near the door of the
15 place where the original meeting was held and in at least one
16 other location appropriate to provide public notice of the
17 continuation of the meeting. Only matters appearing on the
18 agenda of the original meeting may be discussed at the
19 reconvened meeting.

20 F. Meeting notices shall include an agenda
21 containing a list of specific items of business to be discussed
22 or transacted at the meeting or information on how the public
23 may obtain a copy of such an agenda. Except in the case of an
24 emergency, the agenda shall be available to the public at least
25 twenty-four hours prior to the meeting. Except for emergency

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1 matters, a public body shall take action only on items
2 appearing on the agenda. For purposes of this subsection, an
3 "emergency" refers to unforeseen circumstances that, if not
4 addressed immediately by the public body, will likely result in
5 injury or damage to persons or property or substantial
6 financial loss to the public body.

7 G. The board, commission or other policymaking body
8 shall keep written minutes of all its meetings. The minutes
9 shall include at a minimum the date, time and place of the
10 meeting, the names of members in attendance and those absent,
11 the substance of the proposals considered and a record of any
12 decisions and votes taken that show how each member voted. All
13 minutes are open to public inspection. Draft minutes shall be
14 prepared within ten working days after the meeting and shall be
15 approved, amended or disapproved at the next meeting where a
16 quorum is present. Minutes shall not become official until
17 approved by the policymaking body.

18 H. The provisions of Subsections A, B and G of this
19 section do not apply to:

20 (1) meetings pertaining to issuance,
21 suspension, renewal or revocation of a license, except that a
22 hearing at which evidence is offered or rebutted shall be open.
23 All final actions on the issuance, suspension, renewal or
24 revocation of a license shall be taken at an open meeting;

25 (2) limited personnel matters; provided that

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1 for purposes of the Open Meetings Act, "limited personnel
2 matters" means the discussion of hiring, promotion, demotion,
3 dismissal, assignment or resignation of or the investigation or
4 consideration of complaints or charges against any individual
5 public employee; provided further that this subsection is not
6 to be construed as to exempt final actions on personnel from
7 being taken at open public meetings, nor does it preclude an
8 aggrieved public employee from demanding a public hearing.
9 Judicial candidates interviewed by any commission shall have
10 the right to demand an open interview;

11 (3) deliberations by a public body in
12 connection with an administrative adjudicatory proceeding. For
13 purposes of this paragraph, an "administrative adjudicatory
14 proceeding" means a proceeding brought by or against a person
15 before a public body in which individual legal rights, duties
16 or privileges are required by law to be determined by the
17 public body after an opportunity for a trial-type hearing.
18 Except as otherwise provided in this section, the actual
19 administrative adjudicatory proceeding at which evidence is
20 offered or rebutted and any final action taken as a result of
21 the proceeding shall occur in an open meeting;

22 (4) the discussion of personally identifiable
23 information about any individual student, unless the student,
24 his parent or guardian requests otherwise;

25 (5) meetings for the discussion of bargaining

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1 strategy preliminary to collective bargaining negotiations
2 between the policymaking body and a bargaining unit
3 representing the employees of that policymaking body and
4 collective bargaining sessions at which the policymaking body
5 and the representatives of the collective bargaining unit are
6 present;

7 (6) that portion of meetings at which a
8 decision concerning purchases in an amount exceeding two
9 thousand five hundred dollars (\$2,500) that can be made only
10 from one source and that portion of meetings at which the
11 contents of competitive sealed proposals solicited pursuant to
12 the Procurement Code are discussed during the contract
13 negotiation process. The actual approval of purchase of the
14 item or final action regarding the selection of a contractor
15 shall be made in an open meeting;

16 (7) meetings subject to the attorney-client
17 privilege pertaining to threatened or pending litigation in
18 which the public body is or may become a participant;

19 (8) meetings for the discussion of the
20 purchase, acquisition or disposal of real property or water
21 rights by the public body; and

22 (9) those portions of meetings of committees
23 or boards of public hospitals that receive less than fifty
24 percent of their operating budget from direct public funds and
25 appropriations where strategic and long-range business plans

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1 are discussed [~~and~~

2 ~~(10) that portion of a meeting of the gaming~~
3 ~~control board dealing with information made confidential~~
4 ~~pursuant to the provisions of the Gaming Control Act].~~

5 I. If any meeting is closed pursuant to the
6 exclusions contained in Subsection H of this section, the
7 closure:

8 (1) if made in an open meeting, shall be
9 approved by a majority vote of a quorum of the policymaking
10 body; the authority for the closure and the subject to be
11 discussed shall be stated with reasonable specificity in the
12 motion calling for the vote on a closed meeting; the vote shall
13 be taken in an open meeting; and the vote of each individual
14 member shall be recorded in the minutes. Only those subjects
15 announced or voted upon prior to closure by the policymaking
16 body may be discussed in a closed meeting; and

17 (2) if called for when the policymaking body
18 is not in an open meeting, shall not be held until public
19 notice, appropriate under the circumstances, stating the
20 specific provision of the law authorizing the closed meeting
21 and stating with reasonable specificity the subject to be
22 discussed is given to the members and to the general public.

23 J. Following completion of any closed meeting, the
24 minutes of the open meeting that was closed or the minutes of
25 the next open meeting if the closed meeting was separately

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1 scheduled shall state that the matters discussed in the closed
2 meeting were limited only to those specified in the motion for
3 closure or in the notice of the separate closed meeting. This
4 statement shall be approved by the public body under Subsection
5 G of this section as part of the minutes. "

6 Section 4. Section 30-19-1 NMSA 1978 (being Laws 1963,
7 Chapter 303, Section 19-1, as amended) is amended to read:

8 "30-19-1. DEFINITIONS RELATING TO GAMBLING. --As used in
9 Chapter 30, Article 19 NMSA 1978:

10 A. "antique gambling device" means a gambling
11 device twenty-five years of age or older and substantially in
12 original condition that is not used for gambling or commercial
13 gambling or located in a gambling place;

14 B. "bet" means a bargain in which the parties agree
15 that, dependent upon chance, even though accompanied by some
16 skill, one stands to win or lose anything of value specified in
17 the agreement. A bet does not include:

18 (1) bona fide business transactions that are
19 valid under the law of contracts, including:

20 (a) contracts for the purchase or sale,
21 at a future date, of securities or other commodities; and

22 (b) agreements to compensate for loss
23 caused by the happening of the chance, including contracts for
24 indemnity or guaranty and life or health and accident
25 insurance;

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1 (2) offers of purses, prizes or premiums to
2 the actual contestants in any bona fide contest for the
3 determination of skill, speed, strength or endurance or to the
4 bona fide owners of animals or vehicles entered in such
5 contest;

6 (3) a lottery as defined in this section; or

7 (4) betting otherwise permitted by law;

8 C. "gambling device" means a contrivance other than
9 an antique gambling device [~~that is not licensed for use~~
10 ~~pursuant to the Gaming Control Act and~~] that, for a
11 consideration, affords the player an opportunity to obtain
12 anything of value, the award of which is determined by chance,
13 even though accompanied by some skill, whether or not the prize
14 is automatically paid by the device;

15 D. "gambling place" means a building or tent, a
16 vehicle, whether self-propelled or not, or a room within any of
17 them [~~that is not within the premises of a person licensed as a~~
18 ~~lottery retailer or that is not licensed pursuant to the Gaming~~
19 ~~Control Act~~], one of whose principal uses is:

20 (1) making and settling of bets;

21 (2) receiving, holding, recording or
22 forwarding bets or offers to bet;

23 (3) conducting lotteries; or

24 (4) playing gambling devices; and

25 E. "lottery" means an enterprise wherein, for a

Underscored material = new
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1 consideration, the participants are given an opportunity to win
2 a prize, the award of which is determined by chance, even
3 though accompanied by some skill. [~~"Lottery" does not include~~
4 ~~the New Mexico state lottery established and operated pursuant~~
5 ~~to the New Mexico Lottery Act or gaming that is licensed and~~
6 ~~operated pursuant to the Gaming Control Act.~~] As used in this
7 subsection, "consideration" means anything of pecuniary value
8 required to be paid to the promoter in order to participate in
9 a gambling or gaming enterprise. "

10 Section 5. Section 30-19-3 NMSA 1978 (being Laws 1963,
11 Chapter 303, Section 19-3) is amended to read:

12 "30-19-3. COMMERCIAL GAMBLING. - -

13 A. Commercial gambling consists of [~~either~~]:

14 [~~A.~~] (1) participating in the earnings of or
15 operating a gambling place;

16 [~~B.~~] (2) receiving, recording or forwarding
17 bets or offers to bet;

18 [~~C.~~] (3) possessing facilities with the
19 intent to receive, record or forward bets or offers to bet;

20 [~~D.~~] (4) for gain, becoming a custodian of
21 anything of value, bet or offered to be bet;

22 [~~E.~~] (5) conducting a lottery where both the
23 consideration and the prize are money or [~~whoever with intent~~
24 ~~to conduct a lottery, possesses~~] possessing facilities to
25 conduct such a lottery with the intent to do so; or

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1 [F-] (6) setting up a gambling device for use
2 or for the purpose of gambling, or collecting the proceeds of
3 any gambling device.

4 B. Whoever commits commercial gambling is guilty of
5 a fourth degree felony. "

6 Section 6. Section 30-19-15 NMSA 1978 (being Laws 1979,
7 Chapter 4, Section 1) is amended to read:

8 "30-19-15. UNLAWFUL TO ACCEPT [FOR-PROFIT] ANYTHING OF
9 VALUE TO BE TRANSMITTED OR DELIVERED FOR GAMBLING--PENALTY.--

10 A. It is unlawful for any person to, directly or
11 indirectly, knowingly accept for a fee, property, salary or
12 reward anything of value from another to be transmitted or
13 delivered for gambling or pari-mutuel wagering on the results
14 of a race, sporting event, contest or other game of skill or
15 chance or any other unknown or contingent future event or
16 occurrence whatsoever.

17 ~~[B. None of the provisions of this act shall be~~
18 ~~construed to prohibit the operation or continued operation of~~
19 ~~bingo programs presently conducted for charitable purposes.]~~

20 ~~C. Any] B.~~ A person violating [any of] the
21 provisions of this section is guilty of a fourth degree
22 felony. "

23 Section 7. Section 60-7A-19 NMSA 1978 (being Laws 1981,
24 Chapter 39, Section 96, as amended) is amended to read:

25 "60-7A-19. COMMERCIAL GAMBLING ON LICENSED PREMISES.--

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1 A. It is a violation of the Liquor Control Act for
2 a licensee to knowingly allow commercial gambling on the
3 licensed premises.

4 B. In addition to any criminal penalties, any
5 person who violates Subsection A of this section may have his
6 license suspended or revoked or a fine imposed, or both,
7 pursuant to the Liquor Control Act.

8 C. As used in this section, [~~(1)~~] "commercial
9 gambling" means:

10 [~~(a)~~] (1) participating in the earnings of or
11 operating a gambling place;

12 [~~(b)~~] (2) receiving, recording or forwarding
13 bets or offers to bet;

14 [~~(c)~~] (3) possessing facilities with the
15 intent to receive, record or forward bets or offers to bet;

16 [~~(d)~~] (4) for gain, becoming a custodian of
17 anything of value bet or offered to be bet;

18 [~~(e)~~] (5) conducting a lottery where both the
19 consideration and the prize are money, or whoever with intent
20 to conduct a lottery possesses facilities to do so; or

21 [~~(f)~~] (6) setting up for use for the purpose
22 of gambling, or collecting the proceeds of, any gambling device
23 or game [~~and~~

24 ~~(2) "commercial gambling" does not mean:~~

25 ~~(a) activities authorized pursuant to~~

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1 ~~the New Mexico Lottery Act;~~
2 ~~(b) the conduct of activities pursuant~~
3 ~~to Subsection D of Section 30-19-6 NMSA 1978; and~~
4 ~~(c) gaming authorized pursuant to the~~
5 ~~Gaming Control Act on the premises of a gaming operator~~
6 ~~licensee licensed pursuant to that act]. "~~

7 Section 8. REPEAL. --

8 A. Sections 6-24-1 through 6-24-34 NMSA 1978 (being
9 Laws 1995, Chapter 155, Sections 1 through 34, as amended) are
10 repealed.

11 B. Sections 11-13-1 and 11-13-2 NMSA 1978 (being
12 Laws 1997, Chapter 190, Sections 1 and 2) are repealed.

13 C. Sections 21-1-4.3 and 21-1-4.4 NMSA 1978 (being
14 Laws 1996, Chapter 71, Sections 3 and 4) are repealed.

15 D. Sections 30-19-6 and 30-19-7.2 NMSA 1978 (being
16 Laws 1963, Chapter 303, Section 19-6 and Laws 1997, Chapter
17 101, Section 1, as amended) are repealed.

18 E. Section 40-3-9.1 NMSA 1978 (being Laws 1997,
19 Chapter 190, Section 67) is repealed.

20 F. Sections 60-1-1 through 60-1-15 and 60-1-15.2
21 through 60-1-26 NMSA 1978 (being Laws 1933, Chapter 55, Section
22 1, Laws 1977, Chapter 245, Section 123, Laws 1933, Chapter 55,
23 Section 2, Laws 1955, Chapter 87, Section 2, Laws 1973, Chapter
24 323, Sections 3 and 4, Laws 1991, Chapter 7, Section 1, Laws
25 1933, Chapter 55, Sections 3 through 7, Laws 1973, Chapter 323,

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1 Section 7, Laws 1975, Chapter 189, Section 1, Laws 1933,
2 Chapter 55, Sections 8 and 9, Laws 1992, Chapter 110, Section
3 2, Laws 1993, Chapter 300, Section 1, Laws 1933, Chapter 55,
4 Section 10, Laws 1977, Chapter 161, Section 2, Laws 1965,
5 Chapter 270, Section 1, Laws 1933, Chapter 55, Section 11, Laws
6 1947, Chapter 94, Sections 1 and 2, Laws 1975, Chapter 190,
7 Section 1, Laws 1973, Chapter 323, Sections 10 and 11, Laws
8 1991, Chapter 195, Sections 6 and 4 and Laws 1987, Chapter 333,
9 Section 3, as amended) are repealed.

10 G. Sections 60-2B-1 through 60-2B-14 NMSA 1978
11 (being Laws 1981, Chapter 259, Sections 1 through 14, as
12 amended) are repealed.

13 H. Sections 60-2D-1 through 60-2D-18 (being Laws
14 1991, Chapter 233, Sections 1 through 18) are repealed.

15 I. Sections 60-2E-1 through 60-2E-61 NMSA 1978
16 (being Laws 1997, Chapter 190, Sections 3 through 63) are
17 repealed.

18 Section 9. EFFECTIVE DATE. --The effective date of the
19 provisions of this act is July 1, 1998.

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 February 5, 1998
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8 Mr. President:
9

10 Your COMMITTEES' COMMITTEE, to whom has been referred
11

12 SENATE BILL 326
13

14 has had it under consideration and finds same to be GERMANE, in
15 accordance with constitutional provisions, and thence referred to the
16 INDIAN & CULTURAL AFFAIRS COMMITTEE.
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19 Respectfully submitted,
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Manny M. Aragon, Chairman

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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